

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BRENDA K. HURSTON : CASE NO. C-1-01 313
Plaintiff : (Judge Black)
-vs- :
BUTLER COUNTY DEPT. OF :
JOB AND FAMILY SERVICES, : REPLY OF DEFENDANT IN SUPPORT
et al : OF MOTION FOR LEAVE TO FILE
Defendants : FOR SUMMARY JUDGMENT

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Now comes defendant Butler County Department of Job and Family Services and in support of its Motion for Leave to File for Summary Judgment provides the reply memorandum below.

McGOWAN & JACOBS, LLC

s/Jack C. McGowan
Jack C. McGowan (0005619)
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MEMORANDUM

Defendant previously filed a Motion for Leave to File a Motion for Summary Judgment. At that time the case was on the June trial docket of Judge Weber. In the meantime, the parties have agreed to a trial by the Magistrate. Consequently, there is no trial assignment at the present time. Nevertheless, the plaintiff has filed a memorandum in opposition to leave being granted.

It appears that the plaintiff has treated the defendant's

motion as a motion for summary judgment because she has proceeded to detail her claims against the defendant. However, she has failed to cite any statute, rule or case law which would support her opposition to the filing of a motion for summary judgment by the defendant at this time.

As the Court can undoubtedly discern from the lengthy memorandum filed by the plaintiff, she is now relying upon events which occurred as far back as 1989. She apparently recognizes that she did not take any steps to timely complain about her grievances at that time and she attacks her union as not having bargained fairly on her behalf. She claims to have eventually filed a grievance on June 9, 1990 but did not take any further action after her grievance was addressed. She also contends that retaliation started in September, 1992. It is obvious that she is attempting to raise issues that she has not timely brought to the attention of this Court or administrative bodies which would have had jurisdiction.

It is believed that a motion for summary judgment may well simplify the issues as well as the evidence that would be properly received should plaintiff's claims have sufficient merit for a trial. Since the discovery deadline has passed and there is no trial date, it would appear to be a propitious time for the briefing of the issues; and a motion for summary judgment is an appropriate vehicle for doing so. Accordingly, granting defendant's motion would sharpen the issues and provide for a more efficient trial, if one is needed.

Accordingly, since the plaintiff has failed to present a legal basis why defendant should not be permitted to file a motion for summary judgment at this time and Rule 56(b) permits the filing at any time, it is respectfully submitted that defendant's motion should be granted.

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s/Jack C. McGowan

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Jack C. McGowan, 246 High Street, Hamilton, OH 45011, and I hereby certify that I have mailed the document by U.S. Postal Service via certified mail to the following non CM/ECF participant: Brenda K. Hurston, 1812 Grand Avenue, Middletown, Ohio 45044.

s/Jack C. McGowan

Jack C. McGowan